FILE COPY

NOV 30

CHARLES ELMORE

Supreme Court of the United States

October Term, 1931.

No. 171.

FIRST NATIONAL BANK OF BOSTON,
Executor of the Estate of Edward H. Haskell, Deceased,
Appellant,

vs.

STATE OF MAINE,
by Clement F. Robinson, Attorney-General,
Appellee.

Appeal from the Supreme Judicial Court of the State of Maine.

APPELLANT'S BRIEF ON THE MERITS.

CHARLES L. HUTCHINSON,
LEONARD A. PIERCE,
HERBERT J. CONNELL,
465 Congress Street,
Portland, Maine,
FRANKLIN FISHER,
Lewiston, Maine,
Attorneys for Appellant.

COOK, HUTCHINSON, PIERCE & CONNELL,
MARION H. FISHER, Jamestown, N. Y.
Of Counsel.

Index.

		PAGE
I.	OFFICIAL REPORTS OF OPINION OF THE COURT BELOW	1
II.	JURISDICTION	2
III.	STATEMENT OF THE CASE	2
IV.	SPECIFICATION OF ASSIGNED ERRORS RELIED UPON	5
V.	ARGUMENT	6
	A. The Issue	6
	B. The tax in question is not a property tax but is an excise tax on the devolution of property from the dead to the living	6
	C. The exclusive situs of the shares of stock involved here, for inheritance tax purposes, was in Massachusetts the domicile of the owner, and Maine the state of incorporation has no right to collect the questioned tax	10
	(1) *Stepping stones leading to Farmers decision*	11
	(2) *Ground upon which the Maine Court bases its decision*	13
	(3) *There is no distinction between registration of bonds and recording transfers of stocks sufficient to warrant a tax for the latter*	16
	(4) *The facts in the Farmers case are almost identical with those in the case at Bar*	18
	(5) *Shares of stock are intangibles or choses in action and as such are embraced within the language of the Farmers, Baldwin and Beidler opinions and should be within the scope of their principle*	18

PAGE

D. Consideration of possible arguments in support of the tax 23

(1) *Cases cited by Maine Court in its opinion* 23

(2) *Application of the Corry, Frick and Doughton cases to the instant case* 24

a. The *Corry* case 24

b. The *Frick* case 28

c. The *Doughton* case 29

VI. CONCLUSION 32

Table of Cases Cited.

Baldwin v. *Missouri*, 281 U. S. 586 ..... 10, 12, 15, 16, 31

Beidler v. *South Carolina Tax Commission*, 282 U. S. 1. 10, 13

Blackstone v. *Miller*, 188 U. S. 189 11

Blodgett v. *Silberman*, 277 U. S. 1 ..... 9, 12, 19, 21, 29

Bronson, In Re, 150 N. Y. 1 24

Corry v. *Baltimore*, 196 U. S. 466 ..... 24, 30

Crowell's Estate, 124 Me. 71 7

Culver, In Re, 145 Iowa 1 24

Eidman v. *Martinez*, 184 U. S. 578 ..... 7, 8

Farmers Loan & Trust Co. v. *Minnesota*, 280 U. S. 204 10, 12, 14, 15, 16, 17, 18, 20, 23, 31

Frick v. *Pennsylvania*, 268 U. S. 473 ..... 11, 28

Gardner v. *Carter*, 74 N. H. 507 24

Gilman v. *Gilman*, 52 Me. 165 8

Hannis Distilling Company v. *Baltimore*, 216 U. S. 285 30

Hawley v. *Malden*, 232 U. S. 1 ..... 19, 30

Holmes v. *Adams*, 110 Me. 167 8

Jellenik v. *Huron Copper Mining Co.*, 177 U. S. 1 24

Knowlton v. *Moore*, 178 U. S. 41 7

Magoun v. *Illinois Trust & Savings Bank*, 170 U. S. 283 7

PAGE

Rhode Island Hospital Trust Company v. *Doughton*, 270 U. S. 69 ..... 11, 19, 22, 24, 29
Safe Deposit & Trust Co. v. *Virginia*, 280 U. S. 83 .... 12, 31
State v. *Hamlin*, 86 Me. 495 ..... 7, 10
State v. *First National Bank of Boston*, 130 Me. 123, 154 Atl. (Me.) 103 ..... 1, 13, 14
Susquehanna Power Co. v. *State Tax Commission*, 51 S. Ct. 347 28
Tappan v. *Merchants National Bank*, 19 Wall. 490 30
Union Refrigerator Transit Co. v. *Kentucky*, 199 U. S. 194 18

Table of Statutes Cited.

Section 1, Chapter 146, Public Laws of Maine, 1893 .. 38
Section 36, Chapter 51, R. S. 1916 ..... 17, 37
Section 37, Chapter 51, R. S. 1916 ..... 14, 38
Section 1, Chapter 69, R. S. 1916 ..... 4, 5, 35
Section 25, Chapter 69, R. S. 1916 ..... 17, 36
Section 26, Chapter 69, R. S. 1916 37

Textbook Cited.

Commerce Clearing House Inheritance Tax Service, Vol. 1, on "Reciprocal Exemptions" 27

Supreme Court of the United States

October Term, 1931.

No. 171.

FIRST NATIONAL BANK OF BOSTON,
Executor of the Estate of Edward H. Haskell, Deceased,
Appellant,

vs.

STATE OF MAINE,
by Clement F. Robinson, Attorney-General,
Appellee.

Appeal from the Supreme Judicial Court of the State of Maine.

APPELLANT'S BRIEF ON THE MERITS.

I.

OPINION OF THE COURT BELOW.

The first and final opinion of the Supreme Judicial Court of the State of Maine was rendered March 17, 1931: *State of Maine* v. *First National Bank of Boston,* 130 Me. 123, 154 Atl. (Me.) 103. (Printed Transcript of Record herein, P. 11.)

II.

JURISDICTION.

For grounds showing the basis of this Court's jurisdiction, reference is made to Appellant's Statement as to Jurisdiction heretofore filed as required by Rule 12 of the rules of this Court.

III.

STATEMENT OF THE CASE.

(Page references are to the printed Transcript of Record.)

This is an appeal from the final judgment of the Supreme Judicial Court of the State of Maine sitting as a Law Court (R. 26).

Edward H. Haskell died testate, a resident of Massachusetts, January 8, 1924 (R. 5). The largest part of his property consisted of stock in the Great Northern Paper Company, a Maine corporation (R. 6), and concededly most of its property was located in the State of Maine.

Mr. Haskell's will was probated and his estate administered in Massachusetts, which State legally imposed and collected an inheritance tax of $32,190.53 on legacies and distributive shares made up in greater part of the proceeds of said stock in the Great Northern Paper Company (R. 6).

Ancillary administration of the estate was taken out in the State of Maine and an Inheritance Tax of $30,139.88 (after allowing credit for tax paid in Massachusetts) was assessed by the Probate Court of Androscoggin County (R. 7). Although the Decree of the Probate Court assessing the tax and the amount of tax was by consent, nevertheless the Executor of the will expressly reserved the right to avail itself of any defense possible in an action of debt brought to collect the tax assessed under the consent Decree (R. 8).

Thereafter, the action in the case at bar was brought for collection of the tax so assessed (R. 8).

The Appellant herein pleaded the general issue and a brief statement in defense (R. 9) in substance that:

(a) The tax sought to be collected is, under the Statutes of Maine, an excise or duty upon the right or privilege of taking property by will or descent under the law of the State of Maine, and is assessed on transfers from the dead to the living in those cases where it is by virtue of the law of that State that the right or privilege of taking by will or descent at all exists (R. 9).

(b) The transfer of the stock in question was not a transfer as a right or privilege of taking by will or descent by virtue of the laws of the State of Maine, and it is not by virtue of the laws of Maine that the right or privilege of such transfer at all exists. Therefore the assessment of the tax was wholly beyond the power of the State of Maine and was an attempt to tax something not within its jurisdiction contrary to the Fourteenth Amendment of the Constitution of the United States (R. 9).

(c) As the decedent was domiciled in Massachusetts, the situs of the stock owned by him during his lifetime, for inheritance tax purposes, was in Massachusetts, which State collected a transfer tax on said stock. Therefore the imposition by Maine of an inheritance tax on the same stock is beyond the jurisdiction of Maine and constitutes double taxation of intangible property, contrary to the Fourteenth Amendment of the Constitution of the United States (R. 9).

(d) The benefit or privilege conferred by the State of Maine in assisting in the transfer of the stock is so small compared to the tax claimed that the result is such a

flagrant and palpable inequality between the burden imposed and the benefit received as to amount to the arbitrary taking of property without compensation, to spoliation under the guise of exerting the taxing power contrary to the Fourteenth Amendment of the Constitution of the United States (R. 9-10).

An Agreed Statement of Facts reciting in detail the foregoing was executed by the parties (R. 10) and under statutory authority therefor the case was referred for final decision to the Supreme Judicial Court of the State of Maine sitting as a Law Court (R. 12).

It is admitted by both parties that at the time of Mr. Haskell's death the certificates of stock were held by him in Massachusetts and did not have a "business situs" so called in the State of Maine.

The State contended that the Decree of the Probate Court was final and that the question of the unconstitutionality of the Statute under which the Probate Court took jurisdiction and assessed the tax could not be raised collaterally in this action. This question was not decided by the Supreme Judicial Court of Maine and it based its decision solely on the fact that the Statute under which the tax was assessed was valid under the Constitution of the United States. (See Opinion, R. 15.)

The Supreme Judicial Court of Maine by its opinion and judgment held that the shares of stock in the instant case were within the jurisdiction of Maine and were there subject to an inheritance tax, even though the owner was a non-resident decedent, and regardless of where the certificates of stock were located at the time of the death, and that such tax does not violate any provision of the Fourteenth Amendment (R. 21).

The material portion of the Statute so construed and applied is from *Sec. 1, Chap. 69, R. S. Maine 1916,* as follows:

"All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, * * * * shall be subject to an inheritance tax for the use of the state as hereinafter provided. * * * * *."

(The complete Section is set out in the Appendix, p. 35.)

IV.

SPECIFICATION OF ERRORS.

1. The Supreme Judicial Court of Maine erred in refusing to hold that *Sec. 1 of Chapter 69, R. S. Maine 1916* (Appendix p. 35), as construed by said Court, is repugnant to Sec. 1 of the Fourteenth Amendment of the Constitution of the United States, in that the imposition of the tax was wholly beyond the power of the State of Maine, being an attempt to tax property not within its jurisdiction (R. 24 [1]).

2. The Supreme Judicial Court of Maine erred in refusing to hold that said Sec. 1, as construed by said Court, is repugnant to the Fourteenth Amendment of the Constitution of the United States in that the imposition of the tax constituted double taxation of intangible property (R. 24 [3]).

3. The Supreme Judicial Court of Maine erred in refusing to hold that said Sec. 1, as construed by said Court, is repugnant to the Fourteenth Amendment of the Constitution of the United States, in that the benefit or privilege conferred by the State of Maine, in assisting the transfer of the stock in question, is so small compared to the tax claimed that it clearly results in such flagrant and palpable inequality between the burden imposed and the benefit received as to amount to the arbitrary taking of property without just compensation, and spoliation under the guise of exerting the taxing power (R. 24 [5]).

4. The Supreme Judicial Court of Maine erred in holding that the shares of stock in the Great Northern Paper Company, a Maine corporation, are within the jurisdiction of the State of Maine and there subject to an inheritance tax, even though the owner was a non-resident decedent, and regardless of whether the certificates of stock were at the time of death in the State of domicile or in the taxing State, and that such tax does not violate any provision of the Fourteenth Amendment (R. 25 [8]).

5. The Supreme Judicial Court of Maine erred in rendering judgment in favor of the Appellee and against Appellant (R. 25 [9]).

V.

ARGUMENT.

A.

The Issue.

The sole issue to be determined by this Court is whether the State of Maine can constitutionally tax a transfer by will of shares of stock in a Maine corporation, owned, held, and kept at his death outside the State by one domiciled in Massachusetts.

B.

The tax in question is not a property tax but is an excise tax on the devolution of property from the dead to the living.

The tax involved in the case at bar is not a *property* tax imposed upon the living owner of shares of stock but is an *excise* or *duty* imposed on the *devolution* of property by will or descent, a tax on the transfer of property from the dead to the living.

The Maine Court has expressly so held in *State* v. *Hamlin*, 86 Me. 495, at 504, where, in construing *C. 146 of the Public Laws of Maine 1893* (Appendix p. 38), the material provisions of which are identical with the statute now before us, it said:

> "The tax under this statute, is once for all, an excise or duty upon the right or privilege of taking property, by will or descent, under the laws of the State."

And again, p. 507:

> "Whether the parties subject to the excise take by will or descent, it is only under and by virtue of the laws of this State that the right or privilege to take at all exists;"

The above case has been cited with approval by this Court in *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 288; *Knowlton* v. *Moore*, 178 U. S. 55; and *Eidman* v. *Martinez*, 184 U. S. 591.

In other words, the Maine Court has held that the right or privilege of taking property by will or descent exists only by virtue of the laws of the State granting such right or privilege.

With this doctrine, which we think has practically unanimous acceptance, we are in entire accord. But the stock in the Great Northern Paper Company owned by Haskell at his death being personal, intangible property, passed to his personal representatives not by the law of Maine but rather by the law of Massachusetts, the State of domicile. With this conclusion the Maine Court agrees:

In *Crowell's Estate*, 124 Me. 71 at 73, it said:

> "The succession to and distribution of personal property is regulated, not by the law of the domicile of a decedent's ancestor, but by the law of the domicile of the de-

cedent, in force at the time of his death." (Citing long list of Maine cases.)

In *Holmes* v. *Adams,* 110 Me. 167 at 170, the same Court said:

> "The succession to and disposition and distribution of personal property wherever situated is governed by the laws of the domicile of the owner or intestate at the time of his death, without regard to the location of the property or the place of the death."

And in *Gilman* v. *Gilman,* 52 Me. 165 at 172, the same Court spoke as follows:

> "If the domicile of the testator, at the time of his death, was in New York, then his will should be allowed and recorded in this State as a foreign will. (R. S., c. 64, sec. 8.) And, in that case, the moveable property in this State would be disposed of, under the will, according to the laws of the State of New York. (Jarman on Wills, 2.) But, if his domicile was in this State, then the Probate Court here has original jurisdiction, and our laws must govern the construction of the will, and the disposal of the property." (Citing cases.)

To the same effect is the opinion of this Court in *Eidman* v. *Martinez,* 184 U. S. 578.

There it was held that the transfer upon the death of the owner, a resident of Spain, of certain Federal, municipal, and corporate bonds held by his agents in New York was not taxable under the Federal Inheritance Tax Law of 1898 imposing tax upon personal property passing "either by will or by the intestate laws of any state or territory."

At page 589 of the opinion, the Court said:

> "The tax in question in this case is not upon the property itself, but upon the succession. * * * * Laws im-

posing general taxes upon real and personal property are not controlling when applied to taxes upon the succession, when such succession takes place and is governed by the laws of a foreign country. The actual *situs* of the property in such cases cuts but a small figure, while in the case of *general taxes upon such property* it is now considered determinative of the whole question." (Italics ours.)

And p. 592:

"We do not enforce the law of Spain in this case because it is our law, but because the practice of all civilized nations is to recognize the law of the domicil as governing the transmission and inheritance of personal property, and to prevent the confusion that would follow if estates, situated possibly in half a dozen countries, were administered and distributed according to the laws of each country in which any portion of such estate happened to be located. We decline to hold the tax involved in this case applicable to this estate because the words of the statute do not require it, *and because the thing taxed, that is, the transmission of the property* to the legatees or next of kin, takes place in a foreign country." (Italics ours.)

In *Blodgett* v. *Silberman*, 277 U. S. at p. 8, under a very similar statute to that of Maine, this Court held that the tax involved was not upon property but upon the right or privilege of succession.

In the language of the Court:

"In other words, the public contribution which death duties exact is predicated on the passing of property as the result of death, as distinguished from the tax on property disassociated from its transmission or receipt by will, or as the result of intestacy."

Maine, therefore, has declared that the statute under which the tax in the Haskell case is upheld is an excise on the right of taking property by will or descent under the laws of the State granting that right. Maine then concedes that the right to succeed to the personal estate of a decedent is granted and controlled by the law of the State of domicile of the decedent, and *a fortiori,* without such right which did not exist at common law, no property would pass. "Descent is a creature of statute and not a natural right." *State* v. *Hamlin supra,* 86 Me. 505.

In effect, therefore, in upholding the tax under consideration, Maine has held valid an excise imposed by Maine on a right to succession granted solely by the Commonwealth of Massachusetts, even though prior decisions of the Maine Court referred to supra, and the law of the land expressly decide that Massachusetts and not Maine grants the right.

C.

The exclusive situs of the shares of stock involved here, for inheritance tax purposes, was in Massachusetts, the domicile of the owner, and Maine the state of incorporation has no right to collect the questioned tax.

We submit, as we think we shall later demonstrate, that this Court has squarely decided the issue now before it in the case of *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204, hereinafter referred to as the *Farmers* case.

The cases of *Baldwin* v. *Missouri,* 281 U. S. 586, hereinafter referred to as the *Baldwin* case, and *Beidler* v. *South Carolina Tax Commission,* 282 U. S. 1, hereinafter referred to as the *Beidler case,* but strengthen the rule of the *Farmers* case and extend its application.

It is true that in no one of the three cases just mentioned did any of the intangibles on which a tax was imposed comprise corporate shares of stock. But the scope of the three decisions carried to its logical and practical conclusion, does

and should embrace corporate shares as such, and there is no basis in reason or in logic for a practical distinction between shares of corporate stock on the one hand and bonds, certificates of indebtedness, promissory notes, bank accounts, and the other intangibles on the other.

This case presents directly to the Court the question which has of course been raised in the minds of its members many times before and which has been the subject of keen discussion by members of the Bar and conflicting decisions of Courts of the various States.

(1) Stepping stones leading to Farmers decision.

As depicting the trend of the various decisions which culminated in the rule announced in the *Farmers* case, we propose briefly to outline chronologically what we consider the stepping stones by which the Court reached its conclusion there expressed.

In 1903, in *Blackstone* v. *Miller*, 188 U. S. 189, this Court decided, in an opinion written by Mr. Justice Holmes, that the Fourteenth Amendment did not prevent multiple taxation of intangible (or tangible) personalty. Mr. Justice White dissented.

In 1924, in *Frick* v. *Pennsylvania*, 268 U. S. 473, the Fourteenth Amendment was successfully invoked as a protection against double inheritance tax on *tangible* personal property. In this case, an inheritance tax on shares of stock was imposed by various States of incorporation. The legality of such tax was conceded and the Court in its decision still relied on the doctrine of *Blackstone* v. *Miller* as fixing a rule for intangible personalty "on a different footing" from tangible personalty.

In 1925, in *Rhode Island Trust Company* v. *Doughton*, 270 U. S. 69, the same constitutional guaranty was again successfully invoked, the Court holding that North Carolina, at-

tempting to base its jurisdiction on property of a corporation located within its boundaries, could not collect an inheritance tax on stock of a New Jersey corporation owned by a decedent domiciled in Rhode Island.

In 1927, in *Blodgett* v. *Silberman,* 277 U. S. 1, on a constitutional issue squarely before the Court under the same Amendment, it was held that bonds *and stocks* were intangible choses in action, controlled, as to situs, by the rule of *mobilia sequuntur personam,* and subject to succession tax by the State which was the domicile of the owner. The same reasoning applied to bonds was held applicable to stocks and it was expressly held that Connecticut, in which the testator lived, could levy a succession tax on shares of stock in corporations organized in other jurisdictions.

In 1929, in *Safe Deposit & Trust Co.* v. *Virginia,* 280 U. S. 83, the Court decided that the imposition of a tax by Virginia, where the beneficiaries of a trust resided, on securities in the possession of the trustee in Maryland, to the control or possession of which the beneficiaries had no present right, is in violation of the Fourteenth Amendment. Speaking through Mr. Justice McReynolds, the Court said (p. 93):

> "Here we must decide whether intangibles — *stocks,* bonds—in the hands of the holder of the legal title with definite taxable situs at its residence, not subject to change by the equitable owner, may be taxed at the latter's domicile in another State. We think not." (Italics ours.)

In January, 1930, in *Farmers Loan & Trust Co.* v. *Minnesota, supra,* the Court "definitely overruled" the case and doctrine of *Blackstone* v. *Miller* and announced the broad proposition that intangibles and choses in action could have only one tax situs, and that was at the domicile of the owner.

Then followed the case of *Baldwin* v. *Missouri, supra,* which held that an account in a Missouri bank owned by a

citizen of Illinois, and notes given him by citizens of Missouri secured by mortgages of Missouri land recorded in Missouri, were taxable only in Illinois.

And then came the decision in *Beidler* v. *South Carolina*, *supra*, wherein debts due from a South Carolina corporation on open account to a citizen of another State were held immune from taxation in South Carolina.

Thus, since 1924 almost every conceivable type of case, save one identical with the case at Bar, where a citizen of Massachusetts died owning *stock* in a corporation organized under the laws of Maine, has been met and decided, the decision in every instance on the issue directly presented being that an inheritance tax can be levied by one State and by only one State; if the personalty be tangible, by the State where it is located; if the personalty be intangible, by the State of the domicile of the owner. We submit there is neither technical nor practical reason for shares of stock alone of all types of personalty being subjected to double taxation.

(2) Ground upon which the Maine Court bases its decision.

It is a very narrow one.

The Maine Court "recognizing and being necessarily bound" (R. 16) by the opinions of this Court in the *Farmers*, *Baldwin*, and *Beidler* cases "as far as they relate to the classes of property therein involved" (R. 16) expressly bases its finding that the State has power to collect the tax in question upon the provisions of the Maine Statutes relative to transfers of stock generally and to stock held by non-resident decedents as indicating "the necessity of acts of transfer, payment, and delivery to be done and performed under the authority of the Maine law" (R. 20).

The provisions of the Statutes, the Court said (R. 20):

> "indicate and constitute a privilege accorded by the State of Maine, and without that privilege there can be *no complete devolution* of title to the shares of stock involved in this case, and the laws of Maine must of necessity be invoked." (Italics ours.)

The arguments advanced in the *Farmers* case in support of the tax that the obligations taxed were debts of Minnesota and her corporations, subject to her control, that her laws gave them validity, protected them and provided means for enforcing payment and accordingly that the obligations had situs for taxation purposes in that State, were swept aside by this Court in its opinion in that case and were no longer open to the Maine Court as authority for the questioned tax. Of necessity, therefore, that Court had to rely upon the principle that in order to complete the devolution of title to the shares of stock (i.e., to record the transfer on the books of the corporation), the laws of Maine must be invoked.

In other words, the extremely slender support for the tax in the instant case is the existence according to the Maine Court of *Sec. 37, c. 51, R. S. Maine 1916* (Appendix p. 38) which provides that no transfer (of stock) shall affect the right of the corporation to pay dividends or to treat the holder of record as the holder in fact until such transfer is recorded on the books of the corporation or a new certificate issued to the person to whom it has been transferred.

A similar theory was advanced in favor of the constitutionality of the tax in the dissenting opinion of Mr. Justice Holmes in the *Farmers* case but was not adopted by the majority of the Court.

Mr. Justice Stone in his concurring opinion in the *Farmers* case used the following significant language pertinent to the point now under discussion (p. 215):

"In the light of these considerations, granting that the continued existence of the contract rested in part on the law of Minnesota, the relation of that law to the transfer in New York, both in point of theory and in every practical aspect, appears to me to be too attenuated to constitute any reasonable basis for deeming the transfer to be within the taxing jurisdiction of Minnesota."

Mr. Justice Holmes in the same case in his dissent said (p. 216):

"It may be assumed that the transfer considered by itself alone depends on the law of New York, *but if the law of Minnesota is necessary to the existence of anything beyond a piece of paper to be transferred,* then Minnesota may demand payment for a privilege that could not exist without its help. It seems to me that the law of Minnesota is a present force necessary to the existence of the obligation, and that therefore, however contrary it may be to enlightened policy, the tax is good." (Italics ours.)

Between the theory last outlined and that in the minds of the Maine Court we can see little, if any, difference. Both assume that the transfer of the property occurs under the law of the domiciliary State, a State other than that claiming the questioned tax, but both seek to uphold the tax because either the law of the taxing State or some act therein is necessary to complete the transfer.

We think the *Farmers* case sufficiently repudiates the doctrine of the Maine decision but, if more be necessary, we find it in the attitude of the majority of the Court in the *Baldwin* case, in declining to adopt the reasoning of Mr. Justice Stone underlying his dissent in that case expressed in the following language (p. 597):

"It is true that the bonds and notes located in Missouri are choses in action, rights in which may be trans-

ferred at the domicil of the owner as well as in any other state in which he may chance to be. *But the transfer made there is not completely effected without their delivery, which ordinarily can be compelled only in Missouri and in accordance with its laws.* If negotiable, which so far as appears some of them were, their transfer by delivery within Missouri could defeat the transfer made in Illinois. When secured by mortgage on real estate, the transfer of the security, which is an inseparable incident of the chose in action, * * * * *may be affected by the recording laws,* availed of only through the recording facilities where the land is located. * * * * *"* (Italics ours.)

The learned Justice thus emphasized the importance of "delivery" or "recording" in the State asserting the right to tax. This reasoning was not followed by the majority of the Court and yet the entire premise of the Maine Court's opinion is the necessity for the recording of the transfer in Maine as an incident to the devolution of title becoming complete.

Aside from the foregoing, we submit that complete answer to the reasoning of the principal case is contained in the *Farmers* opinion as follows (p. 208):

> "Registration of certain of the bonds we regard as an immaterial circumstance. So did the court below. Counsel do not maintain otherwise."

(3) There is no distinction between registration of bonds and recording transfers of stocks sufficient to warrant a tax for the latter.

Comparing the registered bonds of the City of Minneapolis with the certificates of stock of the Great Northern Paper Company, the City in the one case is a governmental subdivision of the State of Minnesota certainly fully as much under the jurisdiction of the State as any private manufactur-

ing corporation could be. The executor had to present the bonds within that State in order to have a complete new registration. In the case at Bar, a perfectly good transfer as between the owner and everyone else except the corporation can be made under the authority of *Section 36 of Chapter 51, R. S. 1916,* as amended (Appendix p. 37), without going near the State of Maine or any officer of the corporation. The only limitation is that the corporation would have the right to pay the dividend and to treat the holder of record as the holder until the transfer is recorded on the books of the corporation.

Section 25 of Chapter 69, R. S. 1916 (Appendix p. 36) expressly provides that if a foreign executor or administrator wants to transfer a certificate of stock, he must pay an inheritance tax, and it is largely upon that Section, as we view it, that the Supreme Judicial Court of Maine has rested its decision.

Such reliance, we submit, entirely overlooks the basic principle laid down in the *Farmers* case. This Court in that case was not dealing with refined technical distinctions. All through the opinion the attitude of the Court is obvious. It states that primitive conditions have passed;

> "business is now transacted on a national scale. A very large part of the country's wealth is invested in negotiable securities whose protection against discrimination, unjust and oppressive taxation, is matter of the greatest moment" (p. 212).

But wealth invested in stocks is certainly entitled to be protected against oppressive discrimination as much as wealth invested in bonds.

The Court says (p. 212):

> *"Taxation is an intensely practical matter* and laws in respect of it should be construed and applied with a

view of avoiding, so far as possible, unjust and oppressive consequences." (Italics ours.)

(4) The facts in the Farmers case are almost identical with those in the case at bar.

In the *Farmers* case, Minnesota asserted the tax, in our case, Maine. In the former case the decedent was domiciled in New York; in the latter, Massachusetts. The estates were probated in New York and Massachusetts respectively. No question of business situs so-called is involved in either case. Some of the bonds in the Minnesota case were registered bonds requiring, as the record in that case discloses, registration in Minnesota for their complete transfer. The shares in the Maine case required recording on the corporation's books in Maine before the transfer would become completely effective. In each case the State of the domicile *legally* imposed and collected a succession tax. In each the securities were kept and held by the owner in the state of domicile. Thus the cases are on all fours one with the other, with the exception which we submit is a trifling one, that in the one the intangibles involved were bonds and certificates of indebtedness and in the other shares of corporate stock.

(5) Shares of stock are intangibles or choses in action and as such are embraced within the language of the Farmers, Baldwin and Beidler opinions and should be within the scope of their principle.

There can be no question, and we think appellee will concede, that shares of corporate stock are "intangibles" or "choses in action" within the universally accepted significance of these two terms.

Union Refrigerator Transit Co. v. *Kentucky*, 199 U. S. 194 at 206:

"There are doubtless cases in the state reports announcing the principle that the ancient maxim of *mobilia se-*

quuntur personam still applies to personal property, and that it may be taxed at the domicil of the owner, but upon examination they all or nearly all relate to intangible property, such as *stocks,* bonds, notes and other choses in action." (Italics ours.)

Hawley v. *Malden,* 232 U. S. 1, at p. 12:

"While the shareholder's rights are those of a member of the corporation entitled to have the corporate enterprise conducted in accordance with its charter, they are still in the nature of contract rights or *choses in action.*"

Rhode Island Hospital Trust Co v. *Doughton,* 270 U. S. at 81:

"A state has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved or transferred. In the matter of *intangibles, like* choses in action, *shares of stock* and bonds, the situs of which is with the owner, the transfer tax of course may be properly levied by the state in which he resides." (Italics ours.)

Blodgett v. Silberman, 277 U. S., at p. 18:

"Of course this reasoning necessarily sustains the different view of that court that the transfer of certificates of stock in corporations of other states than Connecticut was taxable in the latter *as the transfer of choses in action.*" (Italics ours.)

Of course it would be presumptuous for us to argue what the Court intended by the language it used in the *Farmers* opinion. The opinion speaks for itself. We cannot help believing, however, that the very careful guaranty the Court accorded to "intangibles" and "choses in action" against taxation in more than one State impliedly if not expressly covered and included shares of corporate stock.

Illustrative of that protection, we quote the following:

"In this Court the presently approved doctrine is that no state may tax anything not within her jurisdiction without violating the 14th Amendment * * * *. Also, no state can tax the testamentary transfer of property wholly beyond her power * * * *, or impose death duties reckoned upon the value of tangibles permanently located outside her limits * * * *. These principles became definitely settled subsequent to *Blackstone* v. *Miller*, and are out of harmony with the reasoning advanced to support the conclusion there announced.

At this time it cannot be assumed that tangible chattels permanently located within another state may be treated as part of the universal succession and taken into account when estimating the succession tax laid at the decedent's domicil. *Frick* v. *Pennsylvania* is to the contrary" (p. 210).

And again (p. 211):

"Tangibles with permanent situs therein, and their testamentary transfer, may be taxed only by the state where they are found. And, we think, the general reasons declared sufficient to inhibit taxation of them by two states apply under present circumstances with no less force to *intangibles* with taxable situs imposed by due application of the legal fiction. Primitive conditions have passed; * * * *. And, certainly, existing conditions no less imperatively demand protection of *choses in action* against multiplied taxation whether following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contributions. For many years the trend of decisions here has been in that direction" (p. 212). (Italics ours.)

And also (p. 212):

"We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can

find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough seems insufficient to justify the harsh and oppressive discrimination against *intangibles* contended for on behalf of Minnesota." (Italics ours.)

The foregoing excerpts clearly indicate that the Court employed the use of the expressions "intangibles" and "choses in action" interchangeably. Shares of stock being intangibles and choses in action are certainly embraced by the *language* of the *Farmers* decision and should, we submit, be expressly included within its principle.

Blodgett v. Silberman, 277 U. S. 1, is to the same effect. In that case this Court first suggested its doubt as to the constitutionality of double taxation of intangibles (Opinion, p. 10), and on the square issue presented under the 14th Amendment sustained the jurisdiction of Connecticut, the state of the domicile of the owner, to tax *shares of stock* as well as bonds of foreign corporations owned by a resident decedent.

The Court said (p. 9):

"At common law the maxim "*mobilia sequuntur personam*" applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, insofar as it relates to intangible property, including *choses in action,* * * * * that it must be treated as settled in this jurisdiction whether it prove itself to legal philosophic test or not." (Italics ours.)

And again (p. 10):

"For present purposes it suffices that intangible personalty has such a situs at the domicile of its owner that its transfer on his death may be taxed there."

And also (p. 14):

> "The question here is whether bonds, unlike other choses in action, may have a situs different from the owner's domicile such as will render their transfer taxable in the state of that situs, and in only that state. We think bonds are not thus distinguishable from other choses in action."

Of material bearing on the case at bar, the Court said (p. 18):

> "Of course this reasoning necessarily sustains the different view of that Court that the transfer of certificates of stock in corporations of other states than Connecticut was taxable in the latter as the transfer of choses in action."

So, too, in *Rhode Island Hospital Trust Co.* v. *Doughton* (supra), this Court held that a transfer tax on intangibles may properly be levied by the state in which the owner resides.

With the doctrine thus firmly established that the transfer of shares of stock in foreign corporations is taxable in the domiciliary state, no support can be found for the tax in the principal case unless there be announced as to shares of stock alone, a rule entirely different from that applied to every other type of intangible personalty.

Further, we might add, if Maine has the right in this case to tax the stock of the Great Northern Paper Company, shares of stock may be subjected to much more than double taxation. For example, the Boston & Maine Railroad is a corporation under the laws of Massachusetts, Maine, New Hampshire, and New York. It derives its corporate franchise from each of these four States, and if the decision of the Court in Maine in the instant case is correct, a citizen of Pennsylvania who dies owning stock in the Boston & Maine

Railroad must, under the authority of *Blodgett* v. *Silberman* pay an inheritance tax in Pennsylvania and likewise to New York, Massachusetts, New Hampshire, and Maine. Thus, instead of double, we would have quintuple taxation. Some of the transcontinental railroads, we believe, are incorporated under the laws of more than four States, and as to them the result palpably would be even more unfair.

We are unable to understand what there could be in the nature of a share of stock which could justify any such tremendous, and we submit very unfair distinction between it and a bond. Each is personal property, each is intangible personal property, each represents contract rights or choses in action. Each is readily negotiable. A registered bond, for instance, as in the *Farmers* case, is transferred in very much the same manner as a certificate of stock. An examination of the record in the *Farmers* case will show that certain of the registered bonds were transferable only on the registration books of the debtor kept in the State of Minnesota.

Notwithstanding that fact, this Court said:

> "Registration of certain of the bonds we regard as an immaterial circumstance." (Opinion p. 208.)

D.

Consideration of possible arguments in support of the tax.

(1) Cases cited by Maine Court in its opinion.

The majority of the cases cited by the Maine Court in its opinion as sustaining the tax were expressly based in whole or in part, upon the precedent of *Blackstone* v. *Miller*, which is now overruled. Those which do not cite that case with approval dealt with issues distinguishable from that in the case at bar, or at least they were decided at a time when *Blackstone* v. *Miller* was still controlling on the current issue before the Court.

For example, *Re Bronson*, 150 N. Y. 1, *Re Culver*, 145 Iowa 1, and *Gardner* v. *Carter*, 74 N. H., 507, three cases cited by the Maine Court, are generally interpreted and quoted as authority for the theory that a stockholder owns an "aliquot part" of the property of the corporation and that any State within which any property of the corporation is located has jurisdiction to impose a death tax on the transfer of any shares of stock representing part ownership in such property.

Such a doctrine was expressly repudiated by this Court in *Rhode Island Hospital Trust Co.* v. *Doughton*, 270 U. S. at p. 83, as follows:

> "But whatever the view of the other Courts, that of this Court is clear, that the stockholder does not own the corporate property."

In *Jellenik* v. *Huron Copper Mining Co.*, 177 U. S. 1, also cited by the Maine Court, this Court said at p. 13:

> "Whether the stock is in Michigan so as to authorize that State to subject it to taxation as against individual shareholders domiciled in another State, is a question not presented in this case, and we express no opinion upon it."

The case went to the point only that shares of stock in a corporation had a situs in the State creating the corporation sufficient to subject them there to mesne process.

(2) Application of the Corry, Frick and Doughton cases to the instant case.

a. The Corry case.

We anticipate that the principle announced in *Corry* v. *Baltimore*, 196 U. S. 466, as to an annual property tax, and certain statements of the Court in the *Frick* and *Doughton* cases as to succession taxes, will be claimed by the State as controlling the issue now before this Court.

First of all, it will be noted that in the *Corry* case the tax involved was an annual property tax and not a succession or inheritance tax.

The tax was imposed by a Maryland statute in force at the time the company in question was incorporated, which declared that the *situs* of stock in Maryland corporations owned by non-residents, shall be at the principal office of the corporation in Maryland (Opinion 472). The State Court of Maryland, passing upon the statute, decided that it was in the power of Maryland to fix for the purposes of taxation the *situs* of stock in domestic corporations held by a non-resident. That doctrine was approved by this Court. In other words, the tax was construed to be a tax *"in personam"* against the stockholders and was justified as such on the ground that it was conclusively settled (and conceded in the case) that the State of incorporation has the power to fix the *situs* of stock for purposes of taxation. The tax was upheld on the principle that the sovereignty which creates a corporation has the incidental right to impose regulations on the ownership of stock therein (Opinion 476), and that a regulation establishing the *situs* of stock for the purpose of taxation and compelling the corporation to pay the tax on behalf of the shareholder is not unreasonable. The regulation was an incident to the grant of the charter of the corporation and the stockholder, when he purchased shares, was held to take his stock subject to the prescribed limitation.

But in our case the State of Maine has never attempted, either in effect or expressly, to fix the *situs* of stock in Maine corporations within the State of Maine, either for the purpose of a property tax or to provide for a succession tax.[1]

---

[1] NOTE: The Maine statutes are quoted in full in Appendix, pp. 35 to 38, and by the Maine Court in its opinion, R. 17, 19 and 20. For synopsis of the statutes see pp. 4 and 5, Statement of Jurisdiction heretofore filed under Rule 12.

The term "situs" is not used anywhere in the Maine statutes. They completely ignore the theory of situs which was so expressly included in the Maryland statute. They hinge on the mere clerical act of recording the transfer of stock on the books of the corporation. They neither declare a tax situs in Maine nor reserve a power to tax. And the decisions of the Maine Court referred to early in this brief expressly declare that the succession to personal property, wherever situated, is governed by the laws of the domicile of the owner (in this case Massachusetts).

If the *Corry* case and those approving it are good law today and the reasoning of the *Farmers* case is still to be applied, it necessarily follows that shares of stock in a corporation organized under the laws of a state having statutes similar to that of Maryland, have their situs for taxation purposes in the State of incorporation and have no tax situs in the State of the domicile of the owner. Our own idea is that such a result is extremely undesirable and constitutes a step backward from the enlightened view taken by the Court in the *Farmers* decision and in the *Baldwin* and *Beidler* cases.

It seems to us that the logical, practical and consistent position is that the *Farmers* case has established the principle that intangibles cannot longer be subject to more than one tax, based on conflicting theories of tax situs and jurisdiction, and that the power of the State possessing the jurisdiction to tax is exclusive. We submit that the doctrine of *mobilia sequuntur personam* should control the situs of corporate stock for succession and all other tax purposes and that under that rule corporate stock purchased by a non-resident *ipso facto* acquires immediately a tax situs in the State of his domicile; that the State of incorporation cannot by statute fix a different situs for stock owned by a non-resident or reserve power to tax such stock legally beyond its jurisdiction; and that any statute which attempts to fix a different (and hence conflicting and double) tax situs or jurisdiction, is unconstitutional and void.

Thirty-eight of the States of the Union, including Maine, have impliedly adopted the foregoing principle by the passage of the so-called "reciprocal exemption" statutes, in which no distinction is made between stocks and bonds and under which the right of the domiciliary state of the owner of capital stock to impose succession taxes thereon is conceded and asserted and its jurisdiction made exclusive. (See *Commerce Clearing House Inheritance Tax Service*, Vol. 1, on "Reciprocal Exemptions.")

If Maine has and has exercised the legal right to define the manner in which shares of stock in one of its corporations shall pass upon the decease of a non-resident owner, then Maine has the incidental right to levy its tax upon the privilege which it has so conferred. Maine, however, has not attempted to control any such succession. It admits that the stock in question passes by virtue of the law of Massachusetts. It makes no attempt whatever to control, limit, augment or subtract from any privilege granted by Massachusetts. It attempts merely to extract a toll for the exercise of a right which it does not pretend to confer and it seeks to sustain the toll upon the necessity (imposed by it) of a bare clerical act within its boundaries, which it says is necessary to "complete the devolution" of the stock in question. We contend the imposition of that toll under the circumstances is unconstitutional.

An examination of the statute (Appendix p. 37) relative to transfers by a living owner makes this point more [redacted]. In no way does Maine attempt to limit his right and it expressly provides that a transfer not recorded on the books of the corporation shall be valid and effectual against all the world except the corporation itself. In like manner, the transfer by an executor is valid and effective against every one except the corporation itself, and (only if the decision here appealed from be correct) the State.

As to personal property, a will takes effect immediately upon its admission to Probate in the State of the testator's

domicile; as to real estate, when the will is admitted to Probate in the State where the real estate is located. The will of Mr. Haskell as to the stock in question took effect in Massachusetts. The stock then and there passed in accordance with the terms of the will. Maine had made absolutely no attempt to control that passage and the tax here sought to be collected is one for a privilege granted by a sister state and not by the appellee here.

Further, this Court in *Susquehanna Power Company* v. *State Tax Commission*, 51 S. Ct. 347, pointed out that the State Court of Maryland, construing a statute similar to that in the *Corry* case, found that the assessment did not exceed the value of the tangible personal property of the corporation within the state and was in lieu of any direct tax on that property and could well be sustained as an indirect tax. This, we submit, is another feature distinguishing the Maryland statute from that of Maine.

For the above reasons we think *Corry* v. *Baltimore* is distinguishable from the principal case. If the Court should not concur in this view we submit with deference and respect that the *Corry* doctrine should now be held untenable.

b. The Frick case.

In the *Frick* case, the question of the validity of the transfer taxes collected by the States where the corporations were organized, the stock of which was owned and held by Frick in Pennsylvania, was neither in issue nor was it discussed. The tax was paid by the executors without questioning the power of the States to impose the tax.

The Court, however, said (p. 497):

> "As those states had created the corporations issuing the stocks, they had power to impose the tax and to enforce it by such means, irrespective of the decedent's domicile and the actual situs of the stock certificates."

It is obvious that this is *dictum* and is rested on the very ground urged by Mr. Justice Holmes in his dissenting opinion in the *Farmers* case. If not so treated, however, we submit it is clearly overruled by implication by the *Farmers* case.

After stating the rule of the *Frick* case that tangibles with permanent situs therein and their testamentary transfer, may be taxed only by the State where found, the Court in the *Farmers* case in the next sentence of the opinion (p. 211) says:

> "And, we think, the general reasons declared sufficient to inhibit taxation of them by two states apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction."

And in *Blodgett* v. *Silberman*, 277 U. S. 1, at p. 17, this Court refused to extend the rule of the *Frick* case from tangible property to bonds and reversed the holding of the Connecticut Court sustaining a tax on the latter. We submit the same ruling should be made as to shares of stock.

c. The Doughton case.

In support of its conclusion, the Maine Court quotes with approval (R. 21) the statement of Chief Justice Taft in the *Doughton* case at p. 81 of the opinion, as follows:

> "So, too, it is well established that the state in which a corporation is organized may provide in creating it for the taxation in that state of all its shares, whether owned by residents or non-residents."

This statement is *dictum*.

The issue in the *Doughton* case was whether North Carolina could validly impose an inheritance tax on shares of stock owned by a non-resident in a business corporation of New Jersey because the corporation did business and had two-thirds of its property in North Carolina (Opinion, p. 80). The Court held the North Carolina taxing statute invalid. In support of his statement above quoted, the learned Chief Justice cited *Hawley* v. *Malden*, 232 U. S. 1; *Hannis Distilling Company* v. *Baltimore*, 216 U. S. 285; *Corry* v. *Baltimore*, 196 U. S. 466, and *Tappan* v. *Merchants National Bank*, 19 Wall. 490.

An examination of these cases discloses that the tax in every instance was a property tax and not an inheritance tax.

In the *Hawley* case (p. 12 of the Opinion) the Court queried:

> "Whether, in the case of corporations organized under state laws, a provision by the state of incorporation fixing the situs of shares for the purpose of taxation, by whomever owned, would exclude the taxation of the shares by other States in which their owners reside is a question which does not arise upon this record and need not be decided."

For present purposes, it is unnecessary to decide whether the reasoning of the Court in the *Farmers* case is inconsistent with that in the *Corry* case. We think it sufficient here to reiterate that there is no pretense on the part of Maine that its legislature has fixed the situs of the stock in question in Maine, for the purposes of taxation. If the situs had been so fixed in Maine, the executor here might well have raised in Massachusetts the issue suggested by the above quotation from the *Hawley* case. Maine, however, having made no attempt to fix such a situs, the executor had no choice except to pay the inheritance tax in Massachusetts, wherein the owner was domiciled at the time of his death.

Aside from the foregoing, the *dicta* of the Court above referred to in the *Frick* and *Doughton* cases respectively, falls within the prohibition announced by the Court in *Safe Deposit & Trust Co.* v. *Virginia*, 280 U. S. 83, at p. 94.

The Court, citing certain cases, said:

> "Any general statement in the above opinions which may seem to interfere with the conclusion here announced must be limited and confined to the precise situation then under consideration.
>
> It would be unfortunate, perhaps amazing, if a legal fiction originally invented to prevent personalty from escaping just taxation, should compel us to accept the irrational view that the same securities were within two states at the same instant and because of this to uphold a double and oppressive assessment."

We think it self-evident that the occurrence of a single transfer of property in more than one State is an impossibility.

In the *Farmers* case, Mr. Justice Stone in his concurring opinion said, p. 214:

> "to sustain a privilege tax, the privilege must be enjoyed in the State imposing it *****. It is enough, I think, to uphold the present decision that the transfer was effected in New York by one domiciled there and is controlled by its law."

And in the *Baldwin* case after citing the *Farmers* case, this Court said, p. 593:

> "So far as disclosed by the record, the situs of the credit was in Illinois where the depositor had her domicile. *There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere.*" (Italics ours.)

VI.

CONCLUSION.

Certainly it seems logical and consistent that, if the difference between tangible personalty and intangible personalty is "insufficient to justify the harsh and oppressive discrimination against instangibles contended for on behalf of Minnesota," the difference between stocks and bonds, although obvious enough, is all the more insufficient to justify the harsh and oppressive discrimination against stocks contended for on behalf of Maine.

The proper conduct of business and the maintenance in the Nation of good relations between the States require, as this Court found in the *Farmers* case, that he who loans money to a corporation should not, upon his death, be penalized by double inheritance taxes.

The investor in shares of stock acquires no absolute and paramount obligation to pay but only an interest in the equity of the corporation and much more than the bondholder, assumes the business risk of success or failure of the enterprise in which his money is hazarded.

Does not sound public policy require that he also, along with the bondholder, be protected at his death against the payment of double inheritance taxes?

Business can no more be conducted without the sale and purchase of stocks than it can be without bonds, and no argument except one based on the most refined technicalities can start with the premise that double taxation of bonds is not permissible while that of stocks is entirely proper.

We submit the judgment of the Maine Court in the case at bar should be reversed.

Respectfully submitted,

CHARLES L. HUTCHINSON,
LEONARD A. PIERCE,
HERBERT J. CONNELL,
465 Congress Street,
Portland, Maine,
FRANKLIN FISHER,
Lewiston, Maine,
Attorneys for Appellant.

COOK, HUTCHINSON, PIERCE & CONNELL,
MARION H. FISHER, Jamestown, N. Y.
Of Counsel.

APPENDIX.

The following citations of Maine Statutes are by Chapter and Section number of the 1916 Revised Statutes of Maine, as amended and in force at the death of the testator in the instant case.

Section 1, Chapter 69, R. S. 1916:

"All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, by allowance of a judge of probate to a widow or child, by deed, grant, sale or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, and except as herein otherwise provided, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, except to or for the use of any educational, charitable, religious or benevolent institution in this state, shall be subject to an inheritance tax for the use of the state as hereinafter provided. Property which shall so pass to or for the use of (Class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the adoptive parent, the wife or widow of a son, or the husband of a daughter of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share, in excess of the exemption hereinafter provided, of one per cent if such value does not exceed fifty thousand dollars, one and one-half per cent if such value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent if such value exceeds one hundred thousand dollars; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child or adoptive parent shall in each case be ten thousand dollars, and the value exempt from taxation to or for the use of any other member of (Class A) shall in each case be five hundred dollars. Property which shall so pass to or for

the use of (Class B) a brother, sister, uncle, aunt, nephew, niece or cousin of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be four per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, four and one-half per cent if its value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars and five per cent if its value exceeds one hundred thousand dollars. Property which shall pass to or for the use of any others than members of Class A, Class B and the institutions excepted in the first sentence of this section, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be five per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, six per cent if its value exceeds fifty thousand and does not exceed one hundred thousand dollars and seven per cent if its value exceeds one hundred thousand dollars. Administrators, executors and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid."

Section 25, Chapter 69, R. S. 1916:

"Subject to the provisions of the preceding section if a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this state or in any corporation organized under the laws of this state, owned by a deceased non-resident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the attorney-general at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. Subject to the provisions of said section a bank

located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action of debt brought by the attorney-general."

Section 26, Chapter 69, R. S. 1916:

"Subject to the provisions of section twenty-four no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a non-resident decedent to anyone unless authority to receive the same shall have been given by a probate court of this state, upon satisfactory evidence that all inheritance taxes provided for by this chapter have been paid, guaranteed or secured as hereinbefore provided. Any person or corporation that delivers or transfers any securities or assets in violation of the provisions of this section shall be liable for such tax in an action of debt brought by the attorney-general."

Section 36, Chapter 51, R. S. 1916:

"When the capital of a corporation is divided into shares, and certificates thereof are issued, they may be transferred by indorsement and delivery. The delivery of a certificate of stock of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title against all parties. Certificates of shares with the seal of the corporation affixed, shall be issued to those entitled to them by transfer or otherwise, signed by such officer or officers as the by-laws shall prescribe.

Such officer or officers shall not sign blank certificates, nor sign certificates without knowledge of the apparent title of the persons to whom they are issued, unless the corporation has a duly authorized transfer agent whose duty it is to countersign each certificate issued. In case of the absence or disability of either of the officers authorized by the by-laws to issue shares by transfer or otherwise, the signatures of a majority of the directors in his stead shall be sufficient."

Section 37, Chapter 51, R. S. 1916:

"No transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been so transferred."

Section 1, Chapter 146, Public Laws of Maine, 1893:

"All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of the daughter of a decedent, shall be liable to a tax of two and a half per cent of its value, above the sum of five hundred dollars, for the use of the state, and all administrators, executors, and trustees, and any such grantee under a conveyance made during the grantor's life shall be liable for all such taxes, with lawful interest as hereinafter provided, until the same shall have been paid as hereinafter directed."

